IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6128 of 2005

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : YES

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : YES

MODI VASUDEV PUNAMCHAND

Versus

DISTRICT JUDGE, MEHSANA AND ANOTHER

Appearance:

1. Special Civil Application No. 6128 of 2005

MR PK JANI for the Petitioner.

MR JB PARDIWALA for Respondent Nos. 1,2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 07/04/2005

ORAL JUDGEMENT

1. The Writ Petitioner, in this Writ Petition, has been seeking mandamus or any other appropriate direction for quashing and setting aside the impugned order, dated 16th March, 2003, recorded by the learned District Judge, Mehsana, whereby, the prayer is for staying, the on going Departmental Inquiry, in Departmental Inquiry No.7 of 2002, against the petitioner, pending the Criminal Trial for the alleged offences punishable under Section 7, read

with Sections 13 (i) (A) and 13 (ii) of the Prevention of Corruption Act, 1988, on the premise that he is likely to be prejudiced if both the proceedings continue simultaneously.

2. Mr.P.K.Jani, learned Advocate appearing for the petitioner, has, placed reliance on a decision of the Hon'ble Apex Court rendered in "State Bank of India And Ors. Vs. R.B.Sharma, AIR 2004 SC 4144" in support of the sole contention, which is the main basis of the writ petition, and submitted that the continuance of Departmental Proceedings are likely to prejudice the interest of the petitioner, who is an accused before the Criminal Trial in the said case under the Prevention of Corruption Act, 1988.

3. The said decision is examined threadbare and the learned Advocates appearing for the parties are, also, heard on the merits, on rival contentions.

4. The plea advanced for staying the Departmental Proceedings and the proposition of law advanced, relying on the aforesaid decision of the Hon'ble Apex Court in "State Bank of India Vs.R.B.Sharma (supra)", in clear terms, propounds that what is required to be seen in such a situational reality is whether the Departmental Inquiry would seriously prejudice the delinquent in his defence at the trial in a Criminal Case and it is always a question of fact to be considered in each case, depending in its own facts and circumstances. It is further vividly and evidently expounded that there can be no straight jacket formula as to in which case the Departmental Proceedings are to be stayed and that there may be cases where the trial of the case gets prolonged by the dilatory method adopted by delinquent official. He cannot, therefore, be permitted, on one hand, to prolong Criminal Case and at the same time, contend that the Departmental Proceedings should be stayed on the ground that the Criminal Case is pending.

5. It is a very clear proposition that in order to attract the ratio of the said case, it is to be first, successfully, shown to the satisfaction of the Departmental Authority that the continuance of Departmental Proceedings along with the Criminal Case would, seriously, prejudice the delinquent in his defence at the trial in the Criminal Case. Nothing has been placed on record to show that in the factual matrix and in the background of the circumstances, in which the prosecution has been directed to be launched against the employee working in the District Court, at Mehsana, it

would create prejudice in his defence, much less, a "serious prejudice". On the contrary, it is made amply clear that there must be a case, whereby, the further prosecution in a Criminal Case, and at the same time, the continuance of the Departmental Inquiry against the delinquent, would create an adverse situation. In other words, a "serious prejudice". In the impugned order, the learned District Judge has, rightly, assigned the requisite short grounds for rejecting such a request while passing the order below Exh.5 in Departmental Inquiry No.7 of 2002. What is required to be examined by this Court in its writ jurisdiction, which is plenary, prerogative, equitable and discretionary, is whether the exercise of the discretion by the learned District Judge, as a Disciplinary Authority of the petitioner, has resulted into unjustness, unreasonablness or perversity, while passing the impugned order, rejecting the request for staying the Departmental Proceedings against the petitioner. Even from that point of view and angle, nothing has been shown that the discretionary power, enjoyed by the learned District Judge, and exercised in the set of facts, is in any way vulnerable. On the contrary, the decision, which was relied on before him, is considered and quoted in the impugned order. It is he, who has, total, perception and profile of the facts of the case and who has thought, in his discretionary exercise of power, that there is no likelihood of any prejudice. The question, therefore, raised is, and what it is now to show that this exercise of power by the learned District Judge, while passing the order below Exh.15, which is under challenge, is unjust, unreasonable or perverse. Nothing.

6. Merely saying that the continuance of simultaneous proceedings, against the petitioner, departmentally, as well as, in a Criminal Trial, would generate prejudice, is not enough. It has to be shown to the satisfaction of the Disciplinary Authority that from the factual conspectus, there is a strong case of generation or likelihood of it and not simplicitor, but serious prejudice. Merely, because, that simultaneous proceedings continue to go on, it `ipse-dixit' can not lead to an inference that prejudice is going to be caused. It is a matter of prima facie proof showing to the satisfaction of the Disciplinary Authority. That is, precisely, clearly expounded and propounded in the aforesaid decision of the Hon'ble Apex Court in "Capt.M.Paul Anthony Vs.Bharat Gold Mines Ltd. and Another, AIR 1999 SC 1416" i.e. such a plea has to be supportable from the facts on record. If facts from the record justify the stay in a given case, the Disciplinary

Authority can exercise the discretionary power to stay the proceedings. Needless to mention that there is no any provision, whereby, `ipso facto' a ban or bar is created against the continuance of the Departmental Action when the Criminal Case is on. It is, therefore, a matter of proof, may be, prima facie, from the surrounding set of facts and emerging from the factual landscape and not otherwise. Therefore, the sole submission raised in this petition deserves only and only one legal fate of rejection.

7. It would be interesting to refer a proposition of law laid down in "Senior Superintendent of Posts, Pathananthitta And Others Vs. Gopalan, AIR 1999 SC 1514", wherein, it has been propounded that for the Departmental Proceedings and Criminal Proceedings on the same charge, acquittal of the delinquent by the Criminal Courts would not acquit him of the Departmental Proceedings in respect of some of the charges.

8. The contention of this Court is invited by Mr.J.B.Pardiwala, learned Senior Counsel for the respondent, High Court of Court, to a decision rendered in "State of Gujarat, Rajasthan Vs. B.K.Meena and Ors., AIR 1997 SC 13". He has emphasised the observations made in paragraphs 14, 15, 16 and 17 of the judgment and has contended that there is no fit and appropriate case for stay of Departmental Action, in absence of any material to show serious prejudice, if both the proceedings simultaneously continue. There is no such bar and ban in any provision for simultaneous proceedings against the employee or the servant. This decision supports the impugned order of the learned District Judge.

9. In "Depot Manager, Andhra Pradesh State Road Transport Corporation Vs. Mohd. Yousuf Miya, A.I.R. 1997 SC 2232", it has been, also, held that simultaneous criminal proceedings and Departmental Inquiry can continue. The stay of Departmental Inquiry was not warranted, as the Departmental Inquiry was on the charge of failure to anticipate accident and the prevention thereto, which had nothing to do with the culpability of the evidence under Sections 304A and 338 of the I.P.C. 1860. Similarly, in the Departmental Action, obviously, the charge has been misconduct, dereliction of duty and the commission of the act, unbecoming of a Government Servant, which would not have to be a charge before the Criminal Court. On this ground, also, the petition deserves to be rejected at the threshold. The decision in "Depot Manager, Andhra Pradesh State Road Transport Corporation Limited Vs. Mohd.Yousuf Miya (supra)" is by

the Bench of the three Hon'ble Judges of the Apex Court.

10. It would, also, be expedient, at this juncture, to mention that even in a given fact situation, the acquittal of the accused in a Criminal Trial, would not always be as a ceiling on the Departmental Proceedings. Departmental Proceedings could be initiated even after the verdict rendered in the Criminal Case. In this connection, it would be material to refer to the decision rendered in "Food Corporation of India Vs. George Varghese and Another, AIR 1991 SC 1115", which is, also, by the Bench of three Hon'ble Judges. In this case, after the acquittal of the employee in an appeal, the employer, also, reinstated the employee and placed under suspension and served the delinquent with a charge-sheet etc. for holding a Departmental Inquiry. This was stayed by the High Court, but not affirmed and approved by the Hon'ble Apex Court. The Hon'ble Court, thus, while allowing the appeal, in the result, quashed and set aside the order of the High Court and directed the appellant to proceed with the inquiry as expeditiously and complete the same as far as possible within a period of six months.

11. This Court in "Ahmedabad Municipal Transport Service Vs.Rameshchandra Amratlal Modi, 2004 (3) GLH 566", after considering the relevant and material propositions on the point in issue on earlier decisions, has held that the stay of Departmental Proceedings, pending Criminal Trial, is not a matter of course, but it is to be determined and decided, having regard to the facts and circumstances of the case on hand.

12. Reliance is, also, placed on the proposition, clearly, laid down in paragraph 22 of the judgment in "M.Paul Anthony's case (supra)", which is referred to in para-7 of the judgment by the learned Single Judge in "Ahmedabad Municipal Transport Service Vs. Rameshchandra Amratlal Modi (supra)", emphasising the proposition highlighted in para-22 of the said decision, which, with profit, would, also, be expedient to refer to. It reads hereasunder:-

"22. The conclusions which are deducible from various decisions of this Court referred to above are:-

(i) Departmental proceedings and proceedings in a criminal case can proceed

simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly rejected.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, administration may get rid of him at the earliest.

13. In the light of the aforesaid decisions, the prima facie material and facts, the propositions of law and in conspicuous absence of any material worth the candle to show that in such a fact situational reality, `serious prejudice' is likely to be caused, the view taken by the learned District Judge, which is under challenge, in this petition, deserves to be affirmed, whereas, the petition against the said order by

invocation of Constitutional Writ jurisdiction is patently, meritless, and deserves only and only one legal fate of rejection. Accordingly, the petition shall stand rejected at the admission stage.

14. Since two simultaneous proceedings are going on before two forums, one before the Domestic Tribunal and another before the Criminal Court, the observations, made hereinbefore by this Court in this order, would not in any way influence or affect the merits of the decision in any of the proceedings, as the scope and the parameter of the decision-making is altogether different. Notice discharged without any order as to costs.

(DR. J. N. BHATT, J.)

/shamnath